

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

CC: 02-6

DUARTE UNIFIED SCHOOL DISTRICT,

File No. SLD 143536

DUARTE, CA

Schools and Libraries Universal Service
Support Mechanism

CC Docket No. 02-6
CC Docket No. 96-45

REQUEST FOR REVIEW OF THE DECISION AND WAIVER OF THE
DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR BY
DUARTE UNIFIED SCHOOL DISTRICT, DUARTE, CA

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I. INTRODUCTION

1. Duarte Unified School District, (the "District") appeals the decision of the Universal Service Administrative Company ("USAC") concerning the schools and libraries universal service support mechanism (also known as the E-rate program) requesting return of funds commitment adjustment (COMAD) for the following Y2005 funding requests: 1347263, 1347299 and 1347335.
2. The District requests that the Commission review the decision of USAC requesting return of the funds as the parameters/rules under which the request is constituted were not in place at the time that the funds were approved and disbursed.

II. BACKGROUND

1. Duarte Unified School District had an approved FCDL for FY 2005 471 application number 485781 with nine individual funding requests (3 at 90% discount, 4 at 80% discount, 1 at 76% discount and 1 at 50% discount). The three funding requests at 90% (1347263, 1347299 and 1347335) were funded fairly early in the funding cycle (October 12, 2005) and the Form 486 was filed in a timely manner. Upon planned implementation of these approved funding requests, Duarte Unified School District submitted a service substitution (December 15, 2005) to change the proposed CISCO 7206 router to a more economical CISCO 3825 router. There were some questions from the reviewers regarding the "VDM-1.0 – VPN Device Manager" on the 3825 router that was quoted as part of

the new overall chassis solution. The reviewer requested that the cost associated with this item be identified and removed from the request. The subsequent communication from the applicant via the service provider to the reviewer was that there was no cost associated with the particular line item of the chassis and it could not be ascertained as a separate line item (*documentation attached*). There was no further discussion about reduction of the funding request due to this matter. The service substitution was approved without incident, the funding requests were reduced by the overall lower cost of the replacement routers and the routers were installed. Approval of the 4 80% funding requests (1347366, 1347418, 1437511 and 1347593) did not come until 19 months after the start of the original funding year (January 17, 2007). Upon receipt of the FCDL, Duarte Unified School District submitted the same service substitution that was submitted in December of 2005 and was told that the eligibility of the 3825 router was now 55% eligible and 45% ineligible. Apparently, this eligibility percentage was something that was derived by the Eligible Services team at USAC in conjunction with the manufacturer, CISCO sometime between approximately January 2006 and Duarte's submission of the service substitution. The District was advised of the parameters of the eligible versus the ineligible functionality and agreed to the reduction for the four funding requests that were involved in this most recent service substitution. Prior to this percentage based formula, reviewers would simply ask the applicant to certify that none of the

ineligible functionality would be utilized or if it were, then a cost allocation model would be derived in conjunction with the applicant and the reviewer (as discussed above).

- III. The District was notified that USAC had requested a COMAD from Metronome, Inc (listed service provider) in the amount of \$10,918.11 on August 2, 2007. This COMAD related directly to the 90% funding requests noted above (1347263, 1347299 and 1347335) and the amount equates to the 45% ineligible percentage (including tax, etc.) as delineated in the discussions surrounding the 80% FRN service substitution request (discussed above). The District submitted a USAC appeal on September 27, 2007 on behalf of Metronome, Inc. citing the same reasons outlined in this FCC appeal. The USAC appeal was subsequently denied on December 27, 2007 for reasons that had nothing to do with the original appeal that was submitted. The denial referenced communication regarding the 90% FRNs when in fact, the only communication referencing reduction that occurred was for the 80% FRNs. (*Documentation attached*). Regardless of this fact, Duarte Unified School District respectfully requests that the FCC reverse the decision for COMAD as the rules that were in place at the time that the original service substitution was requested and approved were different from the rules that were in place 19 months later when the subsequent service substitution was submitted.

DISCUSSION

1. The District contends that rule changes or clarifications should not be retroactively applied when the rule change causes detrimental monetary implications as this does not “further the purposes of the

statutory goal mandated by Congress of preserving and advancing universal service among schools and libraries.” Additionally, there are several other processes pending at USAC regarding other funding requests associated with the original Form 471 application that are not being processed while the decision on this appeal is being considered. These delays are of considerable concern to the District as deployment of these technologies is critical for the continued success of the students of Duarte Unified School District.

2. Finally, the budget implications of returning funds that were utilized in a prior fiscal year can be daunting. Though the COMAD has been issued to Metronome, Inc., Duarte Unified School District understands that this direction is coming simply from the fact that Metronome, Inc. utilized the Form 474 Service Provider Invoice process. In the event that this appeal is not granted, Duarte Unified School District does not intend to imply that the responsibility for this COMAD rest with any entity other than itself and has taken steps to protect Metronome, Inc. while this issue is being considered.

IV. CONCLUSION

For the reasons discussed herein, the District respectfully requests the Commission grant the Request for Review and Waiver and remand the case to USAC for further consideration pursuant to the E-rate rules.

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